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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 205

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

GERALD A. EUBANK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JULY 5, 1940
CERTIORARI GRANTED OCTOBER 14, 1940

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vs.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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1 Before United States Board of Tax Appeals

Docket No. 86200

GERALD A. EUBANK, PETITIONER
vs.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket entries

Appearances: For Taxpayer: Bernhard Knollenberg, Harry J. Rudick, Esq. For Commissioner: Albert E. Arent, Esq.

1936

Aug. 21—Petition received and filed. Taxpayer notified. Fee paid.
" 21—Copy of petition served on General Counsel.
Sept. 28—Answer filed by General Counsel.
" 30—Copy of answer served on taxpayer.
Oct. 7—Motion for circuit hearing at New York City filed by taxpayer, October 8, 1936, granted.

1937

Aug. 20—Hearing set week of November 29, 1937, in New York City, N. Y.
Dec. 7—Hearing had before Marion J. Harron, on merits. Submitted. Stipulation of facts filed—Briefs due as per rules.
" 24—Transcript of hearing of December 7, 1937, filed.

1938

Jan. 19—Brief filed by taxpayer. January 19, 1938, copy served on General Counsel.
Feb. 7—Brief filed by General Counsel.
Mar. 3—Reply brief filed by taxpayer.

2 1939

Mar. 14—Findings of Fact and Opinion rendered. Marion J. Harron, Division 13. Decision will be entered under Rule 50.
Apr. 21—Computation of deficiency filed by General Counsel.
" 24—Hearing set May 10, 1939, on settlement under Rule 50.
" 26—Consent to settlement filed by taxpayer.
" 29—Decision entered, Marion J. Harron, Division 13.
July 22—Petition for review by United States Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.
" 26—Proof of service filed by taxpayer (and notice).
Aug. 2—Agreement substituting stipulation of facts for statement of evidence filed.
" 2—Praecipe filed—proof of service thereon. (No counter praecipe will be filed.)

3 Before United States Board of Tax Appeals

Docket No. 86200

Petition

Filed Aug. 21, 1936

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AR:A–2, MEK–90D), dated August 4, 1936, and as a basis of his proceeding alleges as follows:

1. The petitioner is a citizen of the United States, with his office at No. 40 Wall Street, New York, New York.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on August 4, 1936.

3. The taxes in controversy are income taxes for the year 1933, and for $943.34.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

Inclusion in the petitioner's gross income for the year 1933 of the sum of $17,207.94, consisting of commissions, the right, title and interest to which had been sold, transferred, and set over to the Union Trust Company of Detroit by the petitioner on March 28, 1928.

5. The facts upon which the petitioner relies as a basis of this proceeding are as follows:

4 (a) Petitioner and one Hugh D. Hart, under the firm name of Hart & Eubank, were appointed general agents in New York City for the Aetna Life Insurance Company by a written appointment dated August 20, 1924. Petitioner, as successor to said firm of Hart & Eubank, was appointed general agent in New York City for the Aetna Life Insurance Company by a written appointment dated June 28, 1927.

(b) As general agent of said Aetna Life Insurance Company, and under the terms and conditions of said written appointment, petitioner became entitled to certain renewal commissions.

(c) By an instrument dated March 28, 1928, petitioner sold, transferred, and set over to the Union Trust Company, of Detroit, Michigan, as Trustee, all of said commissions then due or to become due under the terms and conditions of said appointments and all his right, title, and interest therein. A copy of said instrument is attached hereto and made a part hereof and marked Exhibit B.

(d) At the time of the execution of said instrument, to wit, March 28, 1928, petitioner had no further obligation to said Aetna Life

Insurance Company in regard to said commissions, whether of collecting premiums or otherwise.

(e) The commissions included by the Commissioner of Internal Revenue in the petitioner's income for 1933 (see Exhibit, page 2, Item No. 1), were commissions paid by said Aetna Life Insurance Company to said Union Trust Company by virtue of said instrument dated March 28, 1928 (Exhibit B) during said year 1933.

5 Wherefore, the petitioner prays that this Board may hear the proceeding and determine (a) that the aforesaid commissions do not represent taxable income of the petitioner, and (b) that there is no deficiency.

BERNHARD KNOLLENBERG,
HARRY J. RUDICK,
Counsel for Petitioner,
25 Broadway, Borough of Manhattan,
New York City, N. Y.

[*Duly sworn to by Gerald A. Eubank; jurat omitted in printing.*]

6 *Exhibit A to petition*

IT:AR:A-2.
MEK-90D.

AUG. 4, 1936.

Mr. GERALD A. EUBANK,
40 Wall Street, New York, New York.

SIR: You are advised that the determination of your income-tax liability for the taxable year(s) 1933 discloses a deficiency of $943.34 as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will prevent the accumulation of interest,

since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner.

By (Signed) W. T. SHERWOOD,
Acting Deputy Commissioner.

Enclosures:
Statement.
Form 870.
MEK/MTR-2.

7 STATEMENT

IT:AR:A-2.
MEK-90D.
In re Mr. Gerald A. Eubank, 40 Wall Street, New York, New York

INCOME TAX LIABILITY

Year, 1933; tax liability, $943.34; tax assessed, none; deficiency, $943.34.

The report dated March 16, 1936, prepared by Revenue Agent Robert E. Dame, a copy of which was transmitted to you on April 28, 1936, has been reviewed and approved by this office with the exceptions as follows:

As a result of the conference held on June 3, 1936, in the revenue agent's office, additional deductions have been allowed as follows:

Christmas cards to brokers	$70.58
Traveling expenses	363.77
Total	434.35

Relative to the inclusion in taxable income of $17,207.94 representing life insurance renewal commission received by a trust established by you, the Bureau holds that the income in question is taxable to you.

Information on file in the Bureau indicates that on March 28, 1928, you made a conveyance in trust of certain insurance renewal commissions then due or to become due in the near future,

8 arising out of a contract with the Aetna Life Insurance Company for the uses and benefits set forth in another instrument dated June 18, 1928. After that date the Aetna Life Insurance Company paid all renewal commissions to the trustee, who accounted for the income in returns filed for the trust.

The United States Circuit Court of Appeals for the Eighth Circuit, in the case of VanMeter v. Commissioner, 61 Fed. (2d) 817, held that income in the form of renewal commissions, where

the general agent was the "earner," was taxable to such agent notwithstanding the fact that the agent had assigned the renewal commissions and the insurance company had paid them direct to the assignee. In so holding the court stated:

"The rule and intent of the taxing statutes is that the earner of income which he might and, normally, would receive and enjoy for himself is not relieved because he chooses not to receive or not to enjoy it, and this is not necessarily changed by such deprivation taking the form of an obligation legally binding him thereto.

"The earner may, in a legally binding way, dispose of his earnings, whether they are already earned or are to be earned, without affecting in the slightest manner his status as earner thereof and his resulting liability for taxation thereon as income."

To the same effect see Lucas v. Earl, 281 U. S. 111; Corless v. Powers, 281 U. S. 376; Burnet v. Leininger, 265 U. S. 136; Bishop v. Commissioner, 65 Fed. (2d) 298; Saenger v. Commissioner, 69 Fed. (2d) 631; and Parker v. Routzahn, 56 Fed. (2d) 730.

9 Net income is adjusted as follows:

Net income reported on return		$3,186.42
Add:		
1. Renewal commissions	$17,207.94	
2. Adjustment of expenses	71.64	
3. Other deductions	772.79	
	18,052.37	
Deduct:		
4. Trust income—		
Other income	5,172.61	
Dividends	371.69	
	5,544.30	
		12,508.07
Net income corrected		15,694.49
Less: Personal exemption and credit for dependents		4,500.00
Balance subject to normal tax		11,194.49
Normal tax at 4% on $4,000.00		160.00
Normal tax at 8% on $7,194.49		575.56
Surtax on $15,694.49		207.78
Total tax		943.34
Tax assessed, account #657508		None
Deficiency		943.34

EXPLANATION OF CHANGES

1. Life insurance renewal commissions are held to be taxable to you rather than to the trust established by you.

10 2. Expenses made in 1932 are disallowed for the year 1933 in the amount of $84.97. Expenses of $13.33 are

allowed for the year 1933. This adjustment is reflected in your drawing account on the books of Johnson & Higgins.

3. Other deductions have been disallowed in the amount of $772.79, as follows:

Automobile expenses	$378.60
Business, travel, and entertainment expenses	394.19
Total	772.79

Auto expenses not connected with your trade or business are disallowed.

Christmas gifts of $221.95 and $172.24 paid in contesting prior years tax assessments represent personal expenses and are, therefore, disallowed.

4. Other income and dividends from a trust are eliminated for the reason that the income is not considered to be trust income and has been included in your return under renewal commissions on life insurance.

In view of the statement in a letter dated July 24, 1936, from your representative, Mr. H. J. Rudick, this statutory notice of deficiency is issued.

A copy of this letter has been mailed to your representative, Mr. Harry J. Rudick, 23 Broadway, New York, New York, in accordance with the authority conferred upon him in the power of attorney executed by you and on file with the Bureau.

MEK/MTR-2.

11 *Exhibit B to petition*

Know all men by these presents, that I, Gerald A. Eubank, of South Orange, County of Essex, State of New Jersey, am the same person who with Hugh D. Hart under the firm name of Hart & Eubank was appointed by the Aetna Life Insurance Company of Hartford, Connecticut, as General Agent for said Company in New York City under written appointment which was executed at Hartford, State of Connecticut, the 20th day of August A. D. 1924 and which took effect on the 1st day of September A. D. 1924; and I am the same person who was appointed General Agent by said Company as successor to said Hart & Eubank to represent said Company as General Agent in New York City, under written appointment which was executed at Hartford, State of Connecticut, the 28th day of June A. D. 1927, and which took effect on the 1st day of July A. D. 1927.

Now, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, I do hereby sell, transfer and set over unto the Union Trust Company, Detroit, Michigan, Trustee, all commis-

ons now due me or to become due me under or on account of and ubject to the terms and conditions of said appointments or amendents thereto and all right, title, and interest therein which I now ave or may have at any future time, hereby waiving all right or tle to and interest in said appointments or amendments thereto nd authorizing and requesting said Company to pay all said commissions to the said Union Trust Company, Trustee, which is hereby authorized to receipt and discharge the same in full.

I do also hereby sell, assign, transfer, and set over unto the said Union Trust Company, Trustee, all my interest in ommissions on Group and Wholesale business as covered by indiidual agreements under each policy placed through the General gencies of Hart & Eubank and/or G. A. Eubank, that may be ow due or to become due me from said Aetna Life Insurance Comany and all right, title, and interest therein which I now have or ay have at any future time, hereby waiving all right or title to nd interest in said commissions and authorizing and requesting aid Company to pay all said commissions to the said Union Trust ompany, Trustee, which is hereby authorized to receipt and discharge the same in full.

In witness whereof, I have hereunto executed this assignment, release, and waiver in triplicate, under seal, at New York, State of ew York, this 28th day of March A. D. 1928.

GERALD A. EUBANK.

Signed, sealed, and delivered in the presence of A. E. Anderson.

TATE OF NEW YORK,
County of New York, ss:

On this 28 da of March A. D. 1928, before me, the undersigned, ppeared Gerald A. Eubank, personally known to me, and duly cknowledged the execution of the above instrument.

JNO. A. LEPEYRE,
Notary Public.

Notary Public, Bronx County. Certificate filed in N. Y. Co. o. —.

Before United States Board of Tax Appeals

Answer

Filed Sept. 28, 1936

The Commissioner of Internal Revenue, by his attorney, Herman Oliphant, General Counsel for the Department of the Treasry, for answer to the petition filed herein, admits and denies, as ollows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the year 1933 but denies that the amount in controversy is $943.34.

4. Denies the allegations of error contained in paragraph 4 of the petition.

5. Denies the allegations contained in paragraphs 5 (a) to (e), inclusive, of the petition.

Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and that petitioner's appeal be denied.

(Signed) HERMAN OLIPHANT,
(Signed) Herman Oliphant,
General Counsel for the Department of the Treasury.

Of Counsel:

HARRY R. HORROW,
Special Attorney, Bureau of Internal Revenue.

HRH/m/9/25/36.

14 Before United States Board of Tax Appeals

Docket No. 86200

Findings of fact and opinion

Promulgated March 14, 1939

Petitioner assigned the contingent right to receive future commissions on insurance renewal premiums to a trust company in 1924 and 1928. In 1933 commissions were paid to the assignee and respondent taxed petitioner thereon because he was the earner of the income. Held, the assignment was or future compensation for personal services and, since petitioner was the earner of the income, it is taxable to him regardless of the anticipatory assignments. Lucas v. Earl, 281 U. S. 111, and Van Meter v. Commissioner, 61 Fed. (2d) 817, followed.

Harry J. Rudick, Esq., for the petitioner. Albert E. Arent, Esq., for the respondent.

The respondent determined a deficiency in the petitioner's income tax for the calendar year 1933 in the amount of $943.34. The petitioner alleges the respondent erred in including in his taxable income certain renewal insurance commissions which were paid in the taxable year to petitioner's assignee.

Findings of fact

Petitioner has an office at 40 Wall St., New York, New York, and notice of deficiency was mailed to that address.

From January 1 to September 1, 1924, petitioner was branch manager for the State of Michigan of the Canada
15 Life Assurance Co., under a contract with that company. After termination of this contract, on September 1, 1924, petitioner became entitled to renewal commissions thereunder with respect to life-insurance premiums collected thereafter on policies written prior to the termination of the contract.

On November 24, 1924, petitioner executed and delivered the following assignment to the Union Trust Co., Detroit, Michigan (subsequently the Union Guardian Trust Co.):

"For a valuable consideration, the undersigned, Gerald A. Eubank, hereby sells, assigns, and transfers to the Union Trust Company, of Detroit, Michigan, all his right, title, and interest in and to a certain agreement bearing date the 22nd day of January 1924, between Canada Life Assurance Company, of the first part, and said Gerald A. Eubank, party of the second part, made in connection with the employment by the said Assurance Company of the said Eubank as a branch manager for said Company, together with all moneys payable or to become payable to the said Eubank under and by virtue of the terms of the said contract.

"In witness whereof, said Gerald A. Eubank has hereunto set his hand and seal this 24th day of November 1924."

The Canada Life Assurance Co. acknowledged receipt of the instrument of assignment.

From September 1, 1924, to June 30, 1927, the petitioner and one Hart, a partner, were general agents in New York City for the Aetna Life Insurance Co., under a contract with that com-
16 pany dated August 20, 1924. This contract was terminated on June 30, 1927, whereupon petitioner individually became general agent in New York City for the Aetna Life Insurance Co., under a contract effective July 1, 1927. Petitioner became entitled to receive one-half of whatever renewal commissions became payable subsequent to June 30, 1927, without obligation to perform any further services.

Petitioner on July 19, 1927, resigned the general agency granted by the last-mentioned contract, such resignation to take effect September 30, 1927. However, in consideration of $12,000 received from his successor appointed by the insurance company, petitioner agreed to make his resignation effective August 31, 1927, i. e., one month earlier, without, however, affecting his right to renewal commissions. After August 31, 1927, petitioner was not required

to render any further services in order to become entitled to the renewal commissions provided for by the agency contract.

In each agency contract between petitioner and the Aetna Life Insurance Co. the insurance company reserves the right to change the rates of commissions payable to the agent. In these contracts it is agreed that in the event of termination of the contracts the company will pay at the end of each three months after termination "commissions" on the premiums actually collected on business secured under the contracts prior to such termination on which the agent would have been entitled to renewal commissions in event of continuance of the contract, in stated percentages for a certain number of years, less any commissions payable to subagents and less any indebtedness of the agent to the insurance company. Then the following appears:

"Said party of the second part [petitioner] hereby agrees
17 that the above-described settlement shall be accepted in full compensation for his interest in the agency hereby conveyed."

The contract with the Canada Life Assurance Co., describes compensation of the branch manager under the contract as first year commissions and renewal commissions, payable at certain rates.

Each of the two contracts with Aetna provides that no assignment, transfer, or disposal of the agency or business, or any interest whatever therein, can be made without the consent and approval of the insurance company in writing. The contract with Canada Life provides that "any rights of the Branch Manager under this agreement shall not be sold or assigned by him without the consent of the Company in writing."

Under all of the contracts, petitioner was an agent of the insurance companies.

On March 28, 1928, petitioner executed and delivered the following assignment to the Union Trust Co., Detroit, Michigan (subsequently, Union Guardian Trust Co.):

"Know all men by these presents, that I, Gerald A. Eubank, of South Orange, County of Essex, State of New Jersey, am the same person who with Hugh D. Hart under the firm name of Hart & Eubank was appointed by the Aetna Life Insurance Company of Hartford, Connecticut, as General Agent for said Company in New York City under written appointment which was executed at Hartford, State of Connecticut, the 20th day of August A. D. 1924, and which took effect on the 1st day of September A. D. 1924; and I am the same person who was appointed General Agent by said Company as successor to said Hart & Eubank to represent
18 said Company as General Agent in New York City, under

written appointment which was executed at Hartford, State of Connecticut, the 28th day of June A. D. 1927, and which took effect on the 1st day of July A. D. 1927.

"Now, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, I do hereby sell, transfer, and set over unto the Union Trust Company, Detroit, Michigan, Trustee, all commissions now due me or to become due me under or on account of and subject to the terms and conditions of said appointments or amendments thereto and all right or title to and interest in said appointments or amendments thereto and authorizing and requesting said company to pay all said commissions to the said Union Trust Company, Trustee, which is hereby authorized to receipt and discharge the same in full.

"I do also hereby sell, assign, transfer, and set over unto the said Union Trust Company, Trustee, all my interest in commissions on Group and Wholesale business as covered by individual agreements under each policy placed through the General Agencies of Hart & Eubank and/or G. A. Eubank, that may be now due or to become due me from said Aetna Life Insurance Company and all right, title, and interest therein which I now have or may have at any future time, hereby waiving all right or title to and interest in said commissions and authorizing and requesting said Company to pay all said commissions to the said Union Trust Company, Trustee, which is hereby authorized to receipt and discharge the same in full.

19 "In witness whereof I have hereunto executed this assignment, release, and waiver in triplicate, under seal, at New York, State of New York, this 28th day of March A. D. 1928."

The Aetna Life Insurance Co. acknowledged receipt of the instrument of assignment as follows:

"UNION TRUST COMPANY,
"*Detroit, Michigan.*

"GENTLEMEN: We have received from Mr. Gerald A. Eubank and placed on file copy of an assignment executed by him in favor of the Union Trust Company, trustee, covering all of Mr. Eubank's commission interests under said contracts and amendments thereto with this Company as named in the assignment.

"The Aetna Life Insurance Company does not guarantee the sufficiency or validity of any assignment and in placing this assignment on file it must be understood that the Company does not waive any of its rights under the contracts or amendments thereto.

"Checks will be forwarded from the Home Office to the Union Trust Company covering commissions as they accrue according to

the terms of the contracts. There will also be checks from time to time sent the Union Trust Company from the Company's cashier in New York City covering various items which are being collected by him."

During the year 1933 petitioner's assignee, the Union Guardian Trust Co., received renewal commissions payable under the provisions of the agency contracts referred to above, as follows:

From Aetna Life Insurance Co., Hart & Eubank contract	$12,354.16
From Aetna Life Insurance Co., Eubank contract	591.47
From Canada Life Assurance Co	2,667.16
	$15,612.79

In computing the deficiency here in question the respondent added to petitioner's taxable income the renewal commissions received by petitioner's assignee in 1933 in the amount of $17,207.94. This amount was incorrect. It is agreed that the amount of such commissions was $15,612.79. Respondent stated, in the explanation of the adjustments made in determining the deficiency, as follows:

"Relative to the inclusion in taxable income of $17,207.94 [sic], representing life insurance renewal commissions received by a trust established by you, the Bureau holds that the income is taxable to you. Information on file in the Bureau indicates that on March 28, 1928, you made a conveyance in trust of certain insurance renewal commissions then due or to become due in the near future, arising out of a contract with the Aetna Life Insurance Co. for the uses and benefits set forth in another instrument dated June 18, 1928. After that date the Aetna Life Insurance Co. paid all renewal commissions to the trustee, who accounted for the income in returns filed for the trust. * * * Life insurance renewal commissions are held to be taxable to you rather than to the trust established by you."

The Commissioner disallowed other deductions claimed as business expenses, and petitioner concedes the disallowance to be correct.

21 *Opinion*

HARRON: The sole question presented in this proceeding is whether petitioner is taxable upon commissions paid in the taxable year to an assignee. The commissions are of a particular type, i. e., commissions payable by insurance companies upon insurance renewal premiums paid by policyholders to them. Respondent contends that such commissions constitute earned income, "compensation for personal service," within the definition of gross income as defined in section 22 (a) of the Revenue Act

of 1932, set forth below in part,[1] and that such income is taxable to petitioner, regardless of the assignments in earlier years, because he is the person who earned the income.

Respondent urges that the question be considered in its broad aspects rather than upon any possible distinctions between the form of the assignment made in 1924, of the interest in the contract, and of the one made in 1928, of the commissions. Respondent argues that the principle expressed in Lucas v. Earl, 281 U. S. 111, is controlling.

Petitioner contends that he is not taxable on the commissions paid in 1933 upon either or both of the following arguments: (a) He contends that the commissions were fully earned prior to the assignments, his services having been performed fully, so that the assignment was of "past earnings" and, therefore, the tax liability is on the assignee. Petitioner argues that the principle of the Lucas v. Earl case is limited to assignment of earnings only where future services are required. (b) The right to receive future commissions was a type of property in praesenti at the time of the assignments, which may be assigned, and the commissions, when paid, vest in the assignee and are taxable to him. Petitioner relies on Hall v. Burnet, 54 Fed. (2d) 443. Other cases relied on by petitioner for either or both propositions are Matchette v. Helvering, 81 Fed. (2d) 73; certiorari denied, 298 U. S. 677; Shanley v. Bowers, 81 Fed. (2d) 13; Walter L. Ross, 30 B. T. A. 496; affd., 83 Fed. (2d) 18; Julius E. Lilienfeld, 35 B. T. A. 391; Louis Boehm, 35 B. T. A. 1106; Blair v. Commissioner, 300 U. S. 5. These cases are not controlling and are distinguishable.

22

The notice of deficiency refers to a separate instrument said to relate to a trust and to have been executed by petitioner June 18, 1928. The record does not contain any explanation of this reference, nor any denial of such, and the pleadings raise no question about the use of the commissions in question, so that this is not a case of income attributable to an assignor or settlor by reason of application of the income for his use or benefit. Cf. Old Colony Trust Co. v. Commissioner, 279 U. S. 716; United States v. Boston & Maine Ry. Co., 279 U. S. 732; Burnet v. Wells, 289 U. S. 670; Douglas v. Willcuts, 296 U. S. 1, 9; Lucy A. Blumenthal, 30 B. T. A. 591; affd., 296 U. S. 389; United States v. L. Manuel Hendler, 303 U. S. 564; Helvering v. Coxey, 297

[1] SEC. 22. GROSS INCOME.
(a) GENERAL DEFINITION.—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

U. S. 694. And, in the way the question is presented, the burden of proof on petitioner does not extend to proving that the commissions were not under petitioner's control or were not applied to his use or benefit. Cf. Commissioner v. Grosvenor, 85 Fed. (2d) 2, 3; Bishop v. Commissioner, supra; Hall v. Helvering, 68 Fed. (2d) 399. If the question involved is one which should be decided on the principle that earned income is taxable to the earner and that his tax liability may not be escaped by anticipatory arrangements, it will become immaterial, in cases like this, what use is made of the commissions by the assignee. On the other hand, if it should be finally decided by the courts that an effective assignment for income-tax purposes can be made of such commissions, relieving the earner-assignor from tax liability, then it will become important, in later cases, to prove that the commissions are not applied to the benefit of the assignor or used according to his control. Cf. Burnet v. Wells, supra, where it was pointed out that tax liability may rest upon the enjoyment of privileges and benefits by the taxpayer so as to require consideration of the ends in the mind of the assignor in combination with assignment of bare legal title.

23

Taxation of commissions on renewal commissions has been considered in a few cases by this Board and in several cases by the Circuit Courts of Appeal, and the present unsettled state of the law on the question is to be found by reference to these particular cases, set forth in a schedule below for convenience.[2] In all reported cases, this Board has held such commissions taxable to the earner-assignor. In all the cases before the courts, subsequent to the Edwards and Woods cases, the courts have held the commissions taxable to the earner-assignor, except in the Hall v. Burnet case. The Edwards and Woods cases did not involve any question of tax liability of an earner-assignor, for no assignment of commissions was involved in those cases. In all the other insurance commissions cases, the question was essentially the same, although there appear to be some differences in the terms of assignments. It is difficult to find any essential differences in the question before the courts in the cases where assignment of the commissions was made and there is a conflict between the Hall v. Burnet case and the others.

24

In this proceeding, the assignments executed by petitioner adopted different phraseology. In the 1924 assignment all inter-

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[2] Board cases: *Arthur F. Hall*, 17 B. T. A. 752; reversed. *Hall* v. *Burnet*; *James M. Stokes, Jr.*, 22 B. T. A. 1386. Court cases: *Edwards* v. *Keith*, 231 Fed. 110 (C. C. A., 2d Cir.); *Woods* v. *Lewellyn*, 252 Fed. 106 (C. C. A., 3d Cir.); *Hall* v. *Burnet*, 54 Fed. (2d) 443 (App. D. C.); *Bishop* v. *Commissioner*, 54 Fed. (2d) 298 (C. C. A., 10th Cir.); *Parker* v. *Routzahn*, 56 Fed. (2d) 730 (C. C. A., 6th Cir.); *Van Meter* v. *Commissioner*, 61 Fed. (2d) 817 (C. C. A., 8th Cir.); *Hall* v. *Helvering*, 68 Fed. (2d) 399 (App. D. C.).

est in an agency contract is assigned. In the 1928 assignment all commissions due or to become due and all right to them is assigned. We regard these differences as immaterial in this proceeding because it is evident that in both instances petitioner intended to assign future commissions. No evidence is present to the contrary. The question presented here does not relate to any question arising between the assignor and assignee under the assignments. The question arises out of a conflict between petitioner and the Commissioner over taxation of commissions paid in 1933. It is clear that petitioner in executing the assignments anticipated that commissions might be paid in the future, and he attempted to assign them to another in advance of payment of the commissions. The commissions were paid. It comes to the same thing so far as the tax question is concerned, whether one or the other phrases was used in the assignment as will be shown.

The contracts under which petitioner was an agent of the insurance companies were contracts of employment, in a broad sense. Compensation for services of petitioner consisted, in part, of commissions on renewal premiums which the companies agreed to pay over periods of ten years, more or less, from and after the time the first premium was paid on a policy. While the agency
25 contracts under which petitioner obtained the business giving rise to the commissions were terminated, nevertheless, the contingent obligations of the companies to pay future commissions continued. The companies retained certain rights, among them the right to offset any debt of petitioner against any commissions payable and the right to change the percentage at which commissions should be payable. It is provided that petitioner cannot dispose of any interest in the contracts without the consent and approval of the insurance companies.

As for the right to commissions arising out of said contracts and payable after their termination, it is clear that in 1924 and 1928, when the assignments were made, the rights were future rights. No present rights had matured when the assignments were made. The obligations of the insurance companies to pay the premiums could not arise until a future time when, as, and if policyholders should pay renewal premiums on business obtained by petitioner. His rights to commissions at the dates of the assignments were contingent, unmatured, uncertain, and unascertained. The amounts of future commissions were uncertain. The insurance companies did not accept in writing the assignments of future commissions made by petitioner. They paid the commissions in 1933 to the assignee, but, as far as we know, they were not legally obliged to do so. It appears that, even after making the assignments, petitioner might have collected the future commissions. Cf.

Wood v. Commissioner, 74 Fed. (2d) 78. Therefore, it is clear that petitioner had no present matured rights to assign and divest himself of, in 1924 and 1928, and, at best, the assignments were of money not yet due or of a contingent future debt of the insurance companies. No legal title to the future commissions was conveyed in 1924 and 1928, because all that was assigned was a chose in
26 action. Rather, petitioner gave his assignee a power to collect and keep the commissions when they should be paid. Petitioner's assignee obtained, under the assignments when made, only an equitable interest in contingent, future commissions. "The assignment of future earnings cannot be regarded as an immediate transfer of any property, but the assignee has an authority or power to collect, and an implied agreement on the assignor's part not to revoke the power." Williston on Contracts, vol. 1, sec. 414. See also, section 447. From the above, we believe it follows that it comes to the same thing whether one or the other phrases of assignment is used, i. e., all interest in the agency contracts, or the right to receive commissions. It is not enough to describe the assignments as relating to an interest in an existing contract, but it is necessary to consider what present interest the assignments could cover.

From the above, it is difficult to agree with the premise upon which the court in the Hall v. Burnet case arrived at its conclusion. The court in that case found that what was assigned was a species of property that gave rise to future income. The court recognized that if what was sought to be conveyed was personal earnings, such would be taxable to the assignor though he never received it. The line drawn is fine. Commissions on renewal premiums are compensation for personal service and are income within the statutory definition thereof. Woods v. Lewellyn, 252 Fed. 106. When the commissions are paid, they represent compensation for past services, earned income. So do salary and wages. Where salary is payable under a contract of ordinary employment, the right to salary under such contract is a future right that does not mature until salary becomes payable. A right to future salary under a contract of ordinary employment may be validly
27 assigned. So it would seem to follow, from the doctrine of the Hall v. Burnet case, that if an earner should assign all interest in a contract of ordinary employment, consisting of a future right to future salary, it would be said that the assignment was of a property right and not of salary. But, if this were correct, it would not follow that the earner-assignor of the future salary would not be liable for income tax on such salary when it was paid. This would be contra to the rule of the Lucas v. Earl case. That case involved a question of taxation of salary and the

problem here is whether to apply the rule of that case to such facts and compensation as is involved in this proceeding. It is worth while to compare the facts briefly.

In 1901 Earl agreed with his wife that any property either had or should acquire in the future should be treated as owned by them as joint tenants, and such property was to comprise earnings, salary, fees, or any rights in contracts and all the proceeds of such property. In 1920 and 1921 Earl received certain salary and fees and he claimed to be liable for income tax upon only one-half thereof. As for earnings, salary, and fees, such were Earl's property. They were the fruits of his work. The Supreme Court refused to separate the right he had to receive salary from the salary itself or from his work, i. e., to treat the salary as growing out of the contract between Earl and his wife. The Supreme Court did not regard the salary as money produced by the contractual right Earl's wife had obtained, but viewed it as growing out of Earl's services.

In this case the assignments were made in 1924 and 1928. The commissions in question were paid in 1933. The commissions were the fruits of petitioner's past work. We find no grounds here for treating the commissions as growing out of an interest in a contract of employment instead of out of petitioner's personal
28 services that could not have been found in the Lucas v. Earl case. But why not consider the similarities between this case and the Earl case? The subject there was salary; here, commissions. Both are compensation for personal services. Insurance commissions make up a large part of the compensation of an insurance agent, in addition to whatever salary he may receive. In a sense, the agent does not "earn" the commissions until third parties pay renewal premiums. No doubt the insurance companies regard the value of an agent's work in obtaining a new policy as dependent upon how long the policy is maintained. The insurance company elects to pay its agent for his work in obtaining the policy, on a commission basis, over a period of, usually, ten years, or for so long as the policy is maintained, up to ten years. Whether or not the commissions are ever paid depends on the ability of the insurance company to pay them, which in turn depends on whether policyholders pay renewal commissions. Likewise, whether future salary is ever to be paid depends upon the ability of the employer to pay the salary. Therefore, it seems reasonable to regard such commissions as we have here as in the same class with salary. Each is a form of compensation for personal service. Also, to resume the comparison between this case and the Earl case, the assignments made by petitioner in 1924 and 1928 were just as much an "anticipatory arrangement" as was the 1901 contract made by Earl. Here, petitioner anticipated that the

commissions would be paid. They were paid. He gave to another the right to collect and keep the premiums. In effect, Earl gave his wife the right to collect and keep one-half of his future salary. We think it should be concluded here that the commissions in question grew out of petitioner's services and not out of assigned interests in a chose in action, keeping in mind the fact that
29 we are dealing with an income tax question. We believe the doctrine of Lucas v. Earl is applicable here and that the rule of that case extends to commissions that are compensation for personal service and that tax on such commissions cannot be escaped by anticipatory arrangements devised to prevent such compensation from vesting in the person who earned them.

If it appears to be a troublesome factor in applying the doctrine of Lucas v. Earl that no further services of petitioner were required to entitle him to receive the commissions, it is nevertheless true that the commissions represented future compensation at the date of the assignments and they were, in a sense, not "earned" until they became payable. Further, where payments are for personal services, it need not be a determining factor, in deciding upon whom tax liability falls, that services have been fully performed. The rule, as we understand it, is that earned income is taxable to the earner. See Blair v. Commissioner, supra; cf. Daugherty v. Commissioner, 63 Fed. (2d) 77; Rossmoore v. Commissioner, 76 Fed. (2d) 520; Chicago Title & Trust Co., Executor, 33 B. T. A. 65; James M. Stokes, Jr., 22 B. T. A. 1386. The definition of gross income is broad and is to be considered in the light of the evident intent of Congress "to use its power to tax to the full extent." Douglas v. Willcuts, supra. If an earner of income may divest himself of earned income before it is payable, the intent of Congress to tax the earner of income is defeated at the start. Such assignments of future income in the guise of assigning some type of contractual right or an interest in a chose in action may become a device for withdrawing from the Government the benefit of graduated taxes and surtaxes applicable to income when concentrated in a single ownership. Cf. Burnet v. Wells, supra.
30 For purposes of income tax, we believe that earnings are in a separate class from other types of income, cf. Matchette v. Helvering, supra, and insurance commissions are a type of earnings.

It has been a guiding principle in the consideration of tax questions that taxation is not so much concerned with refin'ments of title as it is with the actual benefit for which the tax is paid. Corliss v. Bowers, 281 U. S. 376. And if the rule is made certain that earned income is taxable to the earner, no confusion need arise because in one case an earner assigns his right under a contract to future income and in another he assigns the bare, future income. The rule is bottomed upon the distinction between the source of

income earned by the performance of personal services and income produced by interests that clearly are property, separate from the person. Cf. Blair v. Commissioner, supra, where the Court points to a distinction between a beneficial interest and a chose in action. We agree with the conclusion reached in the Van Meter case, supra, that the rules of the Lucas v. Earl and the Corliss cases are opposed to the view expressed in the Hall v. Burnet case, and it is concluded here that while the earner of such commissions as we have here may in a legally binding way dispose of his future earnings, whether they are earned or are to be earned, he does not thereby affect his status as earner, or "his resulting liability for taxation thereon as income."

It is held that petitioner is taxable upon the commissions paid in the stipulated sum of $15,612.79. Respondent is sustained.

Reviewed by the Board.

Decision will be entered under Rule 50.

MURDOCK concurs only in the result.

ARUNDELL, LEECH, and ARNOLD dissent.

[SEAL]

31 Before United States Board of Tax Appeals, Washington

Docket No. 86200

Decision

Pursuant to the Findings of Fact and Opinion of the Board promulgated March 14, 1939, the respondent herein having on April 21, 1939, filed a recomputation and the petitioner having on April 26, 1939, filed an acquiescence therein, now therefore, it is

Ordered and decided: That there is a deficiency in income tax for the year 1933 in the amount of $751.92.

Enter: (Signed) MARION J. HARRON, *Member.*

Entered April 29, 1939.

32 In United States Circuit Court of Appeals for the Second Circuit

B. T. A. Docket No. 86200

Petition for review

Filed July 22, 1939

To the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit:

Now comes Gerald A. Eubank, by his attorneys, Harry J. Rudick and John D. Garrison, and hereby petitions for a review of the

determination of the United States Board of Tax Appeals promulgated in the above-entitled case on March 14, 1939, and of the final order and decision entered therein April 29, 1939, and respectfully shows to this Honorable Court as follows:

I

Petitioner is an individual. Petitioner is and was at all times during the calendar year 1933 a resident and citizen of the United States, having an office at 40 Wall Street, New York, N. Y. Petitioner duly filed an income-tax return for the year 1933 with the Collector of Internal Revenue for the Second District of New York, whose office is located at the Custom House in the Borough of Manhattan, City, County, and State of New York, within the jurisdictional limits of the United States Circuit Court of Appeals for the Second Circuit.

33 The respondent on review (hereinafter referred to as the "Commissioner") is the duly qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States.

II

The Commissioner determined a deficiency in petitioner's income tax for the calendar year 1933 and mailed to petitioner a notice of such deficiency dated August 4, 1936. On August 21, 1936, petitioner filed with the United States Board of Tax Appeals a petition for the redetermination of such deficiency which received Docket No. 86200. Respondent filed an answer on September 28, 1936. Motion for circuit hearing in New York, N. Y., was granted on October 8, 1936, and hearing was held in New York, N. Y., on December 7, 1937, before Honorable Marion J. Harron. The United States Board of Tax Appeals promulgated its opinion on March 14, 1939 (39 B. T. A. No. 76), and, in accordance with the determination contained therein, made and entered on April 29, 1939, its final order and decision that there is a deficiency in petitioner's income tax for the year 1933 in the amount of $751.92.

III

The nature of the controversy is as follows:

Prior to November 24, 1924, petitioner had been branch manager in Michigan for The Canada Life Assurance Company under a contract which had terminated prior to that date, except for the payment of certain commissions on life insurance renewal premiums (hereinafter referred to as "renewal commissions"). On

November 24, 1924, petitioner assigned to Union Trust Com-
34 pany (subsequently Union Guardian Trust Company), Detroit, Michigan, all his right, title, and interest in said contract, together with any moneys that might become payable thereunder.

Prior to March 28, 1928, petitioner had been general agent in New York City for Aetna Life Insurance Company under a contract which, except for the payment of renewal commissions, had terminated prior to that date. On March 28, 1928, petitioner assigned to said Union Trust Company all commissions which might become due him under said contract and all his right, title, and interest therein.

In 1933, by virtue of the assignments hereinabove mentioned, the two insurance companies paid to petitioner's assignee, Union Guardian Trust Company, renewal commissions amounting to $15,612.79. The Commissioner, in his notice of deficiency referred to above, included in petitioner's income for the year 1933 said renewal commissions.

The petitioner contended in his appeal to the United States Board of Tax Appeals that such renewal commissions, having been paid to his assignee pursuant to the assignments hereinbefore mentioned, were not income to petitioner, and, accordingly, were not required to be included in his taxable income for the year involved.

The United States Board of Tax Appeals sustained the determination of the Commissioner and ordered and decided that there was a deficiency in petitioner's income tax for the year 1933 in the amount of $751.92.

IV

Petitioner states that in the decision and final order of the United States Board of Tax Appeals manifest errors occurred to petitioner's prejudice. Petitioner assigns the following errors:

35 1. The Board erred in failing to find the facts as stipulated by the parties.

2. The Board erred in holding (a) that The Canada Life Assurance Company and Aetna Life Insurance Company did not accept in writing the assignments by petitioner under dates of November 24, 1924, and March 28, 1928, to Union Trust Company referred to above; (b) that said insurance companies were not legally obligated to pay such renewal commissions to Union Trust Company as petitioner's assignee; and (c) that petitioner, after making such assignments, was still entitled to collect the renewal commissions payable under his terminated contracts with said companies.

3. The Board erred in holding that The Canada Life Assurance Company and Aetna Life Insurance Company had the right to change the rates at which renewal commissions should be paid under his contracts with said insurance companies.

4. The Board erred in holding that petitioner had no matured property rights under said contracts to assign and divest himself of in 1924 and 1928, respectively, and that accordingly no legal title to renewal commissions, payable after such assignments, was conveyed to Union Trust Company, as petitioner's assignee, in 1924 and 1928, pursuant to said assignments.

5. The Board erred in deciding that such renewal commissions paid in 1933 to Union Guardian Trust Company as petitioner's assignee were income to petitioner and in ordering and deciding that there is a deficiency in petitioner's income tax for the year 1933 in the amount of $751.92.

36 6. The Board erred in failing to decide that such renewal commissions were not income to petitioner.

7. The Board erred in failing to order and decide that there is no deficiency in petitioner's income tax for the year 1933.

Wherefore, petitioner prays that the action of the United States Board of Tax Appeals in this case be reviewed by this Court; that the order and decision of the United States Board of Tax Appeals be reversed; that appropriate action be taken to the end that the errors complained of be reviewed and corrected by this Court and that petitioner be granted such other and further relief as may to this Court appear proper in the premises.

Respectfully submitted.

(S) HARRY J. RUDICK,
(S) JOHN D. GARRISON,
Counsel for Petitioner,
25 Broadway, New York, N. Y.

37 [*Duly sworn to by Harry J. Rudick and John D. Garrison; jurats omitted in printing.*]

38 In United States Circuit Court of Appeals for the Second Circuit

B. T. A. Docket No. 86200

Notice of filing petition for review

Filed July 26, 1939

SIR: Please take notice that the undersigned have this day filed with the United States Board of Tax Appeals on behalf of the

petitioner in the above-entitled case a petition for review by the United States Circuit Court of Appeals for the Second Circuit of the determination of the United States Board of Tax Appeals, promulgated on March 14, 1939, and of the final order and decision entered therein on April 29, 1939. A copy of the petition for review and assignments of error as filed is attached hereto and served upon you.

Dated, July 21, 1939.

(S) HARRY J. RUDICK,
(S) JOHN D. GARRISON,
Counsel for Petitioner.

To COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

Service of a copy of the foregoing notice of filing, together with one copy of the petition for review and assignments of error is acknowledged this 22nd day of July 1939.

(S) J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue,
Counsel for Respondent.

39 In United States Circuit Court of Appeals for the Second Circuit

B. T. A. Docket No. 86200

Agreement substituting stipulation of facts for statement of evidence

Filed August 2, 1939

This proceeding was submitted to the United States Board of Tax Appeals for decision on the pleadings and a stipulation of facts. Petitioner alleges as his first assignment of error in the petition for review by the Circuit Court of Appeals for the Second Circuit that the Board erred in failing to find the facts as stipulated by the parties. In lieu of filing a statement of evidence, the petitioner and respondent hereby agree that the stipulation of facts submitted to the Board be made a part of the record on appeal herein.

Dated, July 29, 1939.

(S) HARRY J. RUDICK,
(S) JOHN D. GARRISON,
Counsel for Petitioner.
J. P. WENCHEL,
Counsel for Respondent.

40 Before United States Board of Tax Appeals

Docket No. 86200

Stipulation of facts

Filed December 7, 1937

The parties hereto by their respective counsel of record hereby stipulate the following facts for the purpose of this action, without prejudice, however, to the right of either party to introduce further evidence not inconsistent with the facts stipulated herein.

1. Petitioner and one Hugh D. Hart, under the firm name of Hart & Eubank, were appointed general agents in New York City for the Aetna Life Insurance Company by a contract dated August 20, 1924, and effective September 1, 1924, a copy of which is attached hereto, marked Exhibit A, and made a part hereof.

2. The agency of Hart & Eubank was terminated as of June 30, 1927, and petitioner, as a member thereof, became entitled to one-half of whatever renewal commissions became payable subsequent to June 30, 1927, under the contract (Exhibit A) referred to in the preceding paragraph. Thereafter, neither petitioner nor said Hart was obligated to perform any further services in order that petitioner should become entitled to said renewal commissions.

3. Petitioner was appointed as general agent in New
41 York City for the Aetna Life Insurance Company effective July 1, 1927, by a contract dated June 28, 1927, a copy of which is attached hereto, marked Exhibit B, and made a part hereof.

4. Petitioner on July 19 resigned the general agency granted by the contract referred to in paragraph 3, said resignation to take effect September 30, 1927. The Aetna Life Insurance Company appointed one R. H. Keffer as general agent to take the place of petitioner after the effective resignation date set forth above, i. e., September 30. Said Keffer approached petitioner and offered petitioner $12,000 if petitioner would make the effective date of his resignation August 31, 1927, instead of September 30, 1927—petitioner's rights to renewal commissions on business written prior to August 31, 1927, to remain unaffected. In other words, for the privilege of taking over the agency a month in advance of the scheduled time, Keffer was willing to pay $12,000. Petitioner accepted Keffer's offer and received from him $12,000, which was reported as taxable income in petitioner's 1927 income-tax return.

5. Thereafter, i. e., after August 31, 1927, petitioner was not required to render any further services whatsoever in order to

become entitled to the renewal commissions provided for by the agency contract, attached hereto as Exhibit B.

6. On March 28, 1928, petitioner executed and delivered to the Union Trust Company (subsequently Union Guardian Trust Company) of Detroit, Michigan, a certain instrument, a copy of which is annexed hereto marked Exhibit C, and made a part hereof. A copy of the Aetna Life Insurance Company's letter dated April 28, 1928, relating to said instrument is attached thereto.

42 7. Petitioner was appointed by The Canada Life Assurance Company as its branch manager for the State of Michigan by a contract dated January 22, 1924, effective January 1, 1924, a copy of which is attached hereto, marked Exhibit D, and made a part hereof.

8. Said contract with The Canada Life Assurance Company was terminated as of September 1, 1924, and thereafter petitioner became entitled to renewal commissions thereunder.

9. On November 24, 1924, petitioner executed and delivered to the Union Trust Company (subsequently Union Guardian Trust Company) a certain instrument, a copy of which is annexed hereto, marked Exhibit E, and made a part hereof. A copy of The Canada Life Assurance Company's acknowledgment under date of December 3, 1924, of the receipt of said instrument is attached thereto.

10. During the year 1933 said Union Guardian Trust Company, by virtue of the instruments referred to in paragraphs 6 and 9 (Exhibits C and E) received renewal commissions payable under the provisions of the agency contracts referred to herein (Exhibits A, B, and D) as follows:

From Aetna Life Insurance Company Hart & Eubank Contract	$12,354.16
From Aetna Life Insurance Company Eubank Contract	591.47
From The Canada Life Assurance Company	2,667.16
	$15,612.79

43 No part of these renewal commissions was due prior to the termination of the agency contracts as hereinbefore set forth.

11. The total amount of renewal commissions received by said Union Guardian Trust Company during the year 1933 under the aforementioned contracts (Exhibits A, B, and D) was $15,612.79, as indicated in the preceding paragraph, rather than $17,207.94, as indicated on page 2 of the deficiency notice.

HARRY J. RUDICK,
Counsel for Petitioner.

(Signed) J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue,
Counsel for Respondent.

Exhibit A

This agreement, made in the City of Hartford, State of Connecticut, this 20th day of August, A. D. 192—, between the Aetna Life Insurance Company of said Hartford, Party of the First Part, and Hugh D. Hart & Gerald A. Eubank (of Little Rock, Arkansas) (of Detroit, Michigan) (doing business under the firm name of Hart & Eubank) Parties of the Second Part, witnesseth, That in consideration of agreements hereinafter made by the said parties of the second part they are hereby ap-
44 pointed by said party of the first part its General Agents for the territory designated below—to procure application for life insurance for said party of the first part in said territory, to receive premiums upon all Policies issued upon such applications, and to collect premiums upon renewals of the same.

Said party of the first part reserves the right to discontinue the writing of new business in the said territory, should the legislation of any State or the interpretation of existing laws respecting the business of insurance companies of other States be deemed by said party of the first part prejudicial to its interests.

Said party of the first part also reserves the right to change the rates of commissions payable to the said parties of the second part (if in its judgment the conditions require such action) on any or all of the plans of insurance embodied in this contract or that may hereafter be adopted, by giving to said parties of the second part sixty days' notice to that effect, in writing.

The commissions payable on premiums for the first year of insurance shall be determined by the Company's regular first-year commission schedule attached hereto, and any modifications of or additions thereto of subsequent date.

This appointment shall cover the following territory, namely: The City of Greater New York, but not to the exclusion of other agents.

47 RENEWAL COMMISSIONS

Said party of the first part further agrees, that on the business secured under this Contract on all plans of insurance except those which specifically provide for no renewal commissions there shall be payable to said parties of the second part, while this Contract remains in full force and effect, the following commissions:

Seven and one-half percent (7½%) of the premiums paid and reported during the second and subsequent eight years of insurance (9 renewals), except that Five percent (5%) only will be allowed on all Term policies and on all forms of Endowment calling for premiums during less than twenty years.

FIRST-YEAR COMMISSION SCHEDULE

(Participating and Non-Participating)

45

LIFE PLANS*

Life Annual Payment	50%
Life Annual Payment (Over Age 65)	30%
Life Annual Payment (Accumulative)	50%
Life Annual Payment (Monthly Income)	50%
Life Annual Payment (Prin. & 6% In.)	50%
Life Annual Payment (Partnership)	40%
Life 20 Payments	45%
Life 20 Payments (Progressive)	45%
Life 20 Payments (Mo. Income)	45%
Life 20 Payments (Prin. & 6% In.)	45%
Life 20 Payments (Partnership)	40%
Life 15 Payments	40%
Life 10 Payments	30%
Life 10 Payments (Over Age 65)	10%
Life Single Payment	5%

DEFERRED ANNUITIES and INCOME BONDS

25 or more Premium Payments	30%
20 to 24 Premium Payments	25%
15 to 19 Premium Payments	20%
10 to 14 Premium Payments	15%
5 to 9 Premium Payments	10%

*ORDINARY LIFE WITH TERM INSURANCE DURING FIRST FIVE YEARS

TERM PREMIUMS	Up to Age 50	40%
	Age 51 and over	25%

(Renewal Com. same rate as Annual Life, and when policy converts to that plan the first year and renewal commissions applicable to that plan at that time will then be payable.)

ENDOWMENT PLANS

	Ann. Pay	20 Pay	10 Pay
35 Year End't	45%	40%	30%
30 Year End't	40%	35%	30%
25 Year End't	35%	30%	20%
20 Year End't	35%	....	20%
20 Year End't (Progressive)	35%	....	....
20 Year End't (Mo. Income)	35%	....	....
20 Year End't (Partnership)	35%	....	....
15 Year End't	30%	....	20%
10 Year End't	20%	....	....
10 Year End't (Over Age 65)	12½%	....	....
Endowment Single Payment			5%

Deferred Endowments same commissions as nearest regular Endowment.

INSURANCE WITH LIFE INCOME AT STATED AGES

PREMIUMS PAYABLE DURING WHOLE TERM

	Insurance with Life Income at				
Age at issue	Age 50	Age 55	Age 60	Age 65	Age 70
16 — 17	45%	45%	45%	50%	50%
18 — 22	40%	45%	45%	45%	50%
23 — 27	35%	40%	45%	45%	45%
28 — 32	35%	35%	40%	45%	45%
33 — 37	30%	35%	35%	40%	45%
38 — 42	30%	30%	35%	35%	40%
43 — 47	*10%	30%	30%	35%	35%
48 — 52	....	*10%	30%	30%	35%
53 — 57	....	....	*10%	30%	30%
58 — 62	....	....	....	*10%	30%
63 — 65	....	....	....	....	*10%

*Limited to Endowment Terms of not less than five years.

PREMIUMS PAYABLE DURING 20 YEARS

Commissions 5% less than provided above for corresponding age and plan.

(Principal and Income Bond, also Insurance with Continuous Income, same commissions as are called for under Insurance with Life Income at Stated Ages.)

TERM

One Year, Renewable 9 years	30%
7 Year, Renewable	35%
All other Term plans	25%

*SINGLE PAYMENT ANNUITIES

Regular Plans, Premiums of $50,000 or less, 5%; Over $50,000 and not exceeding $100,000, 5% on first $50,000 and 4% on excess; Over $100,000, 5% on first $50,000, 4% on next $50,000 and 3% on excess. On special plans the above rates will not apply.

* In determining the amount, all premiums due under single payment annuities on the same life within

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COLLECTION FEES

Five percent (5%) of the premiums paid and reported during the eleventh and subsequent four years of insurance, and Three percent (3%) thereafter, as a Collection Fee, while the Contract remains in full force and effect, on policies on which renewal commissions have been payable as above.

Said party of the first part further agrees to pay all authorized charges for physicians' fees, postage, exchange, express charges on packages of agency supplies, and the taxes and license fees not higher than now required by State law—proper vouchers being furnished for all such expenditures.

Said party of the first part further agrees, to furnish such stationery, blanks, and printed matter as it may consider necessary in the conduct of its business.

48 This agreement further witnesseth, that said parties of the second part hereby accept the agency of said party of the first part—and agree that they will devote their entire time and energy to the business of said party of the first part and to no other; that they will not engage in nor give any time to any other business whatever during the continuance of this Contract; and that they will employ a sufficient number of agents to canvass the territory named, and see that the party of the first part is represented therein by efficient, active agents.

Said parties of the second part further agree, that they will be responsible to the said party of the first part for the premiums and deposits upon all Policies, and Deposit and Renewal Receipts, sent to them by the party of the first part, and for all interest collected by them on premium notes and policy loans; and, that they will account to said party of the first part on or before the last day of each month or at any other time when required, for all premiums, deposits, and interest received by them or their agents, depositing to the credit of or remitting to said party of the first part in New York funds the amount of same less such charges as they may be entitled to under this Contract.

Said parties of the second part further agree, that they will give a Bond to said party of the first part, in the sum of Twenty Thousand Dollars ($20,000.00), with good and satisfactory surety, and that they will renew or increase the same as may be required by said party of the first part.

Said parties of the second part further agree, that the agency books, records, and papers shall be kept in the manner prescribed by, and that they shall be the property of, said party of the first part, subject to its inspection and control at any and all times; and, that the business shall be conducted in all respects in accordance with the instructions of said party of the first part.

49 Said parties of the second part further agree, that any Accident, Health, or Liability Insurance written by them or their agents shall be placed in the Ætna Life Insurance Company through the regular authorized agents of the Accident & Liability Department in said territory.

It is hereby understood and agreed that all contracts or agreements with subagents involving the payment of renewal commissions shall be executed in triplicate on the forms furnished by the party of the first part, and that such contracts or agreements shall not go into full force and effect until approved by an executive officer of said party of the first part.

It is further understood and agreed, that no assignment, transfer, or disposal of said agency or business, or any interest whatever therein can be made without the consent and approval of said party of the first part, in writing.

It is further understood and agreed that if the conditions hereof or agreements herein made by said parties of the second part are not fully complied with the agreements made by said party of the first part shall be wholly null and void.

It is further understood and agreed that the Cashier at said agency shall be the cashier of said party of the first part; that his appointment shall be subject to the approval of, and that he shall at all times be under the control and direction of said party of the first part; and that said Cashier shall have charge of the collection of all moneys due said party of the first part in connection with the business of said agency, and that he shall be required to countersign all checks for the disbursement of agency funds.

50 It is further understood and agreed that this contract may be terminated by either party giving to the other at least sixty (60) days' notice to that effect, in writing.

In event of the termination of this contract, either as above or by the death of either of the parties of the second part, then provided none of the conditions or agreements thereof has been violated by said parties of the second part, the party of the first part hereby agrees that at the end of each Three (3) Months after said termination there shall be payable to said parties of the second part (or their estates) commissions on the premiums actually collected during said three months on business secured under this Contract prior to such termination on which the parties of the second part would have been entitled to renewal commissions in event of its continuance, as follows:

The commissions hereinbefore specified for the first ten years of insurance, less a charge for collecting same of two percent (2%) of the premiums on said business, and less any indebtedness to said party of the first part, and less also any commissions payable to subagents under written contracts in force at the time of such ter-

mination—said party of the first part assuming the payment of all commissions to said subagents as they may become due under such contracts, not in excess of those above agreed to be paid to said parties of the second part in event of the termination of this Contract.

Said parties of the second part hereby agree that the above-described settlement shall be accepted in full compensation for their interest in the agency hereby conveyed.

This Contract is to take effect and become operative on the
51 1st day of September A. D. 1924, and is to govern only the business secured on and after that date through the agency of said parties of the second part. Executed at Hartford, State of Connecticut, this 20th day of August A. D. 1924.

Witness: ÆTNA LIFE INSURANCE COMPANY,
ROLAND F. FAY. By K. A. LUTHER, *Agency Secretary.*
ROLAND F. FAY. HUGH D. HART.
ROLAND F. FAY. GERALD A. EUBANK.

Exhibit B

This agreement, made in the City of Hartford, State of Connecticut, this 28th day of June A. D. 1927, between the Aetna Life Insurance Company of said Hartford, Party of the First Part, and Gerald A. Eubank, of the City of Orange, State of New Jersey, Party of the Second Part.

Witnesseth, that in consideration of agreements hereinafter made by the said party of the second part he is hereby appointed by the said party of the first part its General Agent for the territory designated below—to procure applications for life insurance for said party of the first part in said territory, to
52 receive premiums upon all Policies issued upon such applications, and to collect premiums upon renewals of the same.

Said party of the first part reserves the right to discontinue the writing of new business in the said territory, should the legislation of any State or the interpretation of existing laws respecting the business of insurance companies of other States be deemed by said party of the first part prejudicial to its interests.

Said party of the first part also reserves the right to change the rates of commissions payable to the said party of the second part (if in its judgment the conditions require such action) on any or all of the plans of insurance embodied in this contract or that may hereafter be adopted, by giving to said party of the second part sixty days' notice to that effect in writing.

The commissions payable on premiums for the first year of insurance shall be determined by the Company's regular first-year

commission schedule attached hereto, and any modifications of or additions thereto of subsequent date.

This appointment shall cover the following territory, namely:

The City of Greater New York, including Staten Island, but not to the exclusion of other agents.

55 RENEWAL COMMISSIONS

Said party of the first part further agrees, that on the business secured under this Contract on all plans of insurance except those which specifically provide for no renewal commissions there shall be payable to said party of the second part, while this Contract remains in full force and effect, the following commissions:

Seven and one-half per cent. (7½%) of the premiums paid and reported during the second and subsequent eight years of insurance (9 renewals), except that Five per cent. (5%) only will be allowed on all regular Term policies and on all forms of Endowment calling for premiums during less than twenty years.

COLLECTION FEES

On renewal premiums for the second year of insurance, five per cent. (5%), and on the renewal premiums for the eleventh and all subsequent years, two and one-half per cent. (2½%) as a collection fee while the Contract remains in full force and effect, on policies on which renewal commissions have been payable as covered by that provision of the Contract. (The collection fee of five per cent. (5%) for the second year shall not apply on policies calling for premiums during less than fifteen years.)

Said party of the first part further agrees, to pay all authorized charges for physicians' fees, postage, exchange, express charges on packages of agency supplies, and the taxes and license fees not higher than now required by State law—proper vouchers being furnished for all such expenditures.

Said party of the first part further agrees, to furnish such stationery, blanks and printed matter as it may consider necessary in the conduct of its business.

56 This agreement further witnesseth, that said party of the second part hereby accepts the agency of said party of the first part—and agrees that he will devote his entire time and energy to the business of said party of the first part and to no other; that he will not engage in nor give any time to any other business whatever during the continuance of this Contract; and, that he will employ a sufficient number of agents to canvass the territory named, and see that the party of the first part is represented therein by efficient, active agents.

FIRST-YEAR COMMISSION SCHEDULE

(Participating and Non-Participating)

(For Ages Over 65 See Note)

LIFE PLANS

	Whole Term	30 Pay.	25 Pay.	20 Pay.	15 Pay.	10 Pay.
Life	50%	45%	45%	45%	40%	30%
Modified Life	40%	(In 6th policy year 60% of increase in the premium)				
Accumulative	50%	....	....	....	....	....
Monthly Income	50%	....	....	45%	....	....
Principal & 6% Income	50%	....	....	45%	....	....
Progressive (2½ & 5%)	....	....	....	45%	....	....
Partnership	40%	....	....	40%	....	....

ENDOWMENT PLANS

	Whole Term	20 Pay.	10 Pay.
35 Year End't	45%	40%	30%
30 Year End't	40%	35%	30%
25 Year End't	35%	30%	20%
20 Year End't	35%	....	20%
20 Year End't (Progressive)	35%	....	....
20 Year End't (Mo. Income)	35%	....	....
20 Year End't (Partnership)	35%	....	....
15 Year End't	30%	....	20%
10 Year End't	20%	....	....

Deferred Endowments same commissions as nearest regular Endowment.

CONTINUOUS INCOME AND INSURANCE WITH LIFE INCOME AT STATED AGES

PREMIUMS PAYABLE DURING WHOLE TERM

Age at issue	Insurance with Life Income at Age 50	Age 55	Age 60	Age 65	Age 70
16 — 17	45%	45%	45%	50%	50%
18 — 22	40%	45%	45%	45%	50%
23 — 27	35%	40%	45%	45%	45%
28 — 32	35%	35%	40%	45%	45%
33 — 37	30%	35%	35%	40%	45%
38 — 42	20%	30%	35%	35%	40%
43 — 47	*10%	20%	30%	35%	35%
48 — 52	....	*10%	20%	30%	35%
53 — 57	....	....	*10%	20%	30%
58 — 62	....	....	....	*10%	20%
63 — 65	....	....	....	....	*10%

*Limited to Endowment Terms of not less than five years.

PREMIUMS PAYABLE DURING 20 YEARS

Commissions 5% less than provided above for corresponding age and plan.

TERM PLANS

One Year, Renewable 9 years	20%
7 Year, Renewable	35%
Special 5 Year (Non-Renewable)	
Up to Age 50	40%
Age 51 and over	25%
All other term plans	25%

DEFERRED ANNUITIES and INCOME BONDS

25 or more Premium Payments	30%
20 to 24 Premium Payments	25%
15 to 19 Premium Payments	20%
10 to 14 Premium Payments	15%
5 to 9 Premium Payments	10%

SINGLE PAYMENT

Insurances	5%
Annuities	3%

NOTE — Commissions on policies issued above age 65 on all Plans except Single Payment will be the same in dollars and cents as for a policy issued at age 65. In cases where an extra premium is being charged, resulting in a premium higher than the regular premium for age 65, the commissions allowed will be the same in dollars and cents as for a policy issued on a standard life at age 65.

Under the terms of your contract the above ruling is of course subject to revision at any time as may be deemed advisable by the Company.

Where case is rated up in age and commission is based on age, rated up age will govern.

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Said party of the second part further agrees, that he will be responsible to the said party of the first part for the premiums and deposits upon all Policies, and Deposit and Renewal Receipts, sent to him by the party of the first part, and for all interest collected by him on premium notes and policy loans; and, that he will account to said party of the first part on or before the last day of each month or at any other time when required, for all premiums, deposits, and interest received by him or his agents, depositing to the credit of or remitting to said party of the first part in New York funds the amount of same less such charges as he may be entitled to under this Contract.

Said party of the second part further agrees, that he will give a Bond to said party of the first part, in the sum of Ten Thousand Dollars ($10,000) with good and satisfactory surety, and that he will renew or increase the same as may be required by said party of the first part.

Said party of the second part further agrees, that the agency books, records, and papers shall be kept in the manner prescribed by, and that they shall be the property of, said party of the first part, subject to its inspection and control at any and all times; and, that the business shall be conducted in all respects in accordance with the instructions of said party of the first part.

57 Said party of the second part further agrees, that any Accident, Health, or Liability Insurance written by him or his Agents shall be placed in the Aetna Life Insurance Company through the regular authorized agents of the Accident & Liability Department in said territory.

It is hereby understood and agreed, that all contracts or agreements with sub-agents involving the payment of renewal commissions shall be executed in triplicate on the forms furnished by the party of the first part, and that such contracts or agreements shall not go into full force and effect until approved by an executive officer of said party of the first part.

It is further understood and agreed, that no assignment, transfer, or disposal of said agency or business, or any interest whatever therein, can be made without the consent and approval of said party of the first part, in writing.

It is further understood and agreed that if the conditions hereof or agreements herein made by said party of the second part are not fully complied with, the agreements made by said party of the first part shall be wholly null and void.

It is further understood and agreed, that the Cashier at said agency shall be the cashier of said party of the first part; that his appointment shall be subject to the approval of, and that he shall at all times be under the control and direction of, said party

of the first part; and, that said Cashier shall have charge of the collection of all moneys due said party of the first part in connection with the business of said agency, and that he shall be required to countersign all checks for the disbursement of agency funds.

It is further understood and agreed that this contract may be terminated by either party giving to the other at least sixty (60) days' notice to that effect, in writing.

58 In event of the termination of this Contract, either as above or by the death of the party of the second part, then provided none of the conditions or agreements thereof has been violated by said party of the second part, the party of the first part hereby agrees that at the end of each Three (3) Months after said termination there shall be payable to said party of the second part (or his estate) commissions on the premiums actually collected during said three months on business secured under this Contract prior to such termination on which the party of the second part would have been entitled to renewal commissions in event of its continuance, as follows:

The commissions hereinbefore specified for the first ten years of insurance, less a charge for collecting same of one and one-half per cent. (1½%) of the premiums on said business, and less any indebtedness to said party of the first part, and less also any commissions payable to sub-agents under written contracts in force at the time of such termination—said party of the first part assuming the payment of all commissions to said sub-agents as they may become due under such contracts, not in excess of those above agreed to be paid to said party of the second part in event of the termination of this Contract.

Said party of the second part hereby agrees that the above described settlement shall be accepted in full compensation for his interest in the agency hereby conveyed. This Contract is to take effect and become operative on the First day of July A. D. 1927, and is to govern only the business secured on and after that date through the agency of said party of the second part. Executed at Hartford, State of Connecticut, this 28th day of June A. D. 1927.

ÆTNA LIFE INSURANCE COMPANY,
By K. A. LUTHER, *Vice President.*
GERALD A. EUBANK.

Witness:
ROLAND F. FAY.
M. ———(illegible).

59 *Exhibit C*

Know all men by these presents, that I, Gerald A. Eubank, of South Orange, County of Essex, State of New Jersey, am the same person who with Hugh D. Hart under the firm name of Hart & Eubank was appointed by the Aetna Life Insurance Company of Hartford, Connecticut, as General Agent for said Company in New York City under written appointment which was executed at Hartford, State of Connecticut, the 20th day of August A. D. 1924 and which took effect on the 1st day of September A. D. 1924; and I am the same person who was appointed General Agent by said Company as successor to said Hart & Eubank to represent said Company as General Agent in New York City, under written appointment which was executed at Hartford, State of Connecticut, the 28th day of June A. D. 1927, and which took effect on the 1st day of July A. D. 1927.

Now, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, I do hereby sell, transfer, and set over unto the Union Trust Company, Detroit, Michigan, Trustee, all commissions now due me or to become due me under or on account of and subject to the terms and conditions of said appointments or amendments thereto and all right, title, and interest therein which I now have or may have at any future time, hereby waiving all right or title to and interest in said appointments or amendments thereto and authorizing and requesting said Company to pay all said commissions to the said Union Trust Company, Trustee, which is hereby authorized to receipt and discharge the same in full.

I do also hereby sell, assign, transfer, and set over unto the
60 said Union Trust Company, Trustee, all my interest in commissions on Group and Wholesale business as covered by individual agreements under each policy placed through the General Agencies of Hart & Eubank and/or G. A. Eubank, that may be now due or to become due me from said Aetna Life Insurance Company and all right, title, and interest therein which I now have or may have at any future time, hereby waiving all right or title to and interest in said commissions and authorizing and requesting said Company to pay all said commissions to the said Union Trust

Company, Trustee, which is hereby authorized to receipt and discharge the same in full.

In witness whereof, I have hereunto executed this assignment, release, and waiver in triplicate, under seal, at New York, State of New York, this 28th day of March A. D. 1928.

Signed, sealed, and delivered Gerald A. Eubank in the presence of
C. E. ANDERSON

STATE OF NEW YORK,
County of New York, ss.

On this 28th day of March A. D. 1928 before me, the undersigned, appeared Gerald A. Eubank, personally known to me, and duly acknowledged the execution of the above instrument.

JNO. A. DELEYER,
Notary Public.

Notary Public, Bronx County. Certificate filed in N. Y. Co. No.
(Notarial Seal)

61 AETNA LIFE INSURANCE COMPANY,
Hartford, Connecticut, April 12, 1928.

UNION TRUST COMPANY,
Detroit, Michigan.

GENTLEMEN: We have received from Mr. Gerald A. Eubank and placed on file copy of an assignment executed by him in favor of the Union Trust Company, trustee, covering all of Mr. Eubank's commission interests under said contracts and amendments thereto with this Company as named in the assignment.

The Aetna Life Insurance Company does not guarantee the sufficiency or validity of any assignment and in placing this assignment on file it must be understood that the Company does not waive any of its rights under the contracts or amendments thereto.

Checks will be forwarded from the Home Office to the Union Trust Company covering commissions as they accrue according to the terms of the contracts. There will also be checks from time to time sent the Union Trust Company from the Company's Cashier in New York City covering various items which are being collected by him.

Very truly yours,

K. A. LUTHER, *Vice President.*

K. A. Luther.
RFF.

EXHIBIT "D"

BRANCH MANAGER'S CONTRACT

62

This Agreement made in duplicate this 22nd day of January, 19 26.

to take effect the 1st day of January, 19 26., between THE CANADA LIFE ASSURANCE COMPANY, party of the first part, hereinafter called the Company, and Donald A. Robert

of Detroit, Michigan of the second part, hereinafter called the Branch Manager.

Witnesseth, That the Company doth hereby appoint the said party of the second part as its Branch Manager for The State of Michigan for the purpose of canvassing for and procuring applications for insurance on the lives of individuals with the said Company, and for such other duties as the Company may require, and that this appointment is made on the following terms and conditions, which are mutually agreed to.

COMPENSATION

The Branch Manager shall be allowed the following compensation for his services under this agreement:

A. FIRST YEAR COMMISSIONS.

Upon first year premiums, during the continuance of this Agreement, to be obtained, collected, paid to and received by the Company on policies effected by or through the Branch Manager, commissions shall be paid as per the percentage shown in the following Schedule.

PLAN	WITH PROFIT		WITHOUT PROFIT Per Cent
Whole Life Continuous Annual Premiums	[illegible]	[illegible]	40
" " 20, 25 and 30 Annual Premiums			35
" " 15 Annual Premiums			30
" " 10 "			25
Endowment 30 years or more, Continuous Annual Premiums			35
" 20 and 25 years " " "			30
" 15 years " " "			25
" 10 " " " "			20
" 20 years, 20 Annual Premiums			30
Twenty-Year Capital Return			35
Endowment 15, 20, 25, 30 years, 10 Annual Premiums			30
" at Ages 65 and 75, 20 or more Annual Premiums			25
" " " " 20-29 " "			20
" " " " 18-19 " "			15
" " " " 15-17 " "			10
" " " " 13-14 " "			5
" " " " 10-12 " "			3
Guaranteed Premium Reduction			5
Term Policies, 5 Year Term, convertible within 4 years			5
" " 10 " " " 8 "			5
Single Premiums	5	4	3½

1. Pension and Dual Pension Policies shall receive the same rate as corresponding Endowment policies of the same duration, payable in one sum.
2. Joint Life and Endowment Plans shall receive 10% less than rates on corresponding plans, single life.
3. No commissions shall be allowed on extra premiums for residence or occupation.
4. Rate of commission on Double Endowments and Pure Endowments to be four-fifths of the rate on corresponding similar plans.
5. Where a policy is issued on a life previously assured in the Company under a policy which has been surrendered or allowed to lapse, then commission in respect of the first year's premium on the new policy shall be determined by the Company.

B. RENEWAL COMMISSIONS.

A renewal commission of seven and one-half per cent. (7½%) on With Profit Premiums and two and one-half per cent. (2½%) on Without Profit Premiums on policies (except Endowment policies requiring less than fifteen annual premiums) secured by or through the said Branch Manager under the terms of this Agreement as the said premiums are paid for in cash to the Company, shall be paid for a period of nine (9) years, provided this Agreement continues in force for such nine year period. On Endowment policies requiring less than fifteen annual premiums the renewal commission shall be five per cent. (5%) on With Profit Premiums and two and one-half per cent. (2½%) on Without Profit Premiums. No commission shall be allowed on premiums advanced under the Automatic Non-Forfeiture privilege until such premiums so advanced are paid in cash, nor shall commissions be allowed upon premiums on policies which lapse for more than 90 days from expiration of the days of grace unless the reinstatement of the said policies is effected by or through the assistance of the Agent.

These renewal commissions are subject to Condition No. 9 and to General Conditions regarding compensation.

This Clause also covers all policies produced under the terms of the previous agreement dated the 1st day of January, 1924, between the parties hereto.

C. RENEWAL COMMISSIONS PAYABLE AFTER DEATH AND DISABILITY BENEFIT.

Provided the Agreement [illegible] the Branch Manager or his estate will be allowed, in the event of the termination of this Agreement, by death or causes other than by the violation of the terms of this Agreement, the renewal commissions above referred to in Clause B, under "Compensation" for the balance of the said nine year period subject to the conditions of this Agreement, less any indebtedness on the part of the Branch Manager to the Company, and less a collection charge of one per cent. (1%) of the premiums. Settlement hereunder to be made quarterly. It is further agreed, however, that should any Term Policy written under this said Agreement be converted [illegible] by another representative of the Company after such termination of this Agreement, no further

DEFINITIONS.

The "Contract Year" shall be the calendar year. During the portion of the calendar year in which this Agreement becomes effective, credit shall be given *pro rata* for the "Issued and Paid-for New Business" up to 31st December of that year.

In reckoning "Issued and Paid-for New Business" credit for policies effected shall be given only in the year in which the premiums for the same are paid in cash to the Company, and shall be reckoned as follows: Where the full annual premium is paid in the "Contract Year," the credit shall consist of the full sum assured; where the premium paid is half-yearly, quarterly or for a broken period of such broken period is for three months or over) the credit shall be based on the *pro rata* amount of the sum assured. Term business shall not count, but term business converted from commencement or attained age shall count in the year in which the conversion takes place. Policies in connection with real estate loans made by the Company shall not count, nor shall policies on the Branch Manager's own life, unless a full year's premium shall have been paid thereon. Credit for annuities shall be decided upon by the Company. Business written by sub-agents appointed by the Branch Manager, under the terms of this Agreement shall count in accordance with the above conditions. The above shall be subject to any modification caused by any other representative being entitled to any portion of the said credit.

GENERAL CONDITIONS REGARDING COMPENSATION.

I.—If, in any case, it should be deemed proper in consequence of alleged misrepresentations made or misunderstandings had, at the time of the issue of a policy, to return the premiums thereon and cancel it, the Branch Manager shall lose all right to commissions on premiums under said policy, and shall be bound to repay on demand the amount of commissions received on premiums so returned.

II.—All commissions on premiums on all classes of policies not named in this Agreement, or upon policies which have to be reinsured, shall be determined by the Company.

III.—The scale of first year commissions payable hereunder shall be subject to revision.

IV.—When a policy that has been issued and paid for is changed, it shall be determined by the Company whether any, and if so what, commission shall be payable to the Branch Manager.

V.—If the actual or rated up age of the assured is over that at entrance, the commission on the first year's premium and on renewal premiums shall be calculated only on the amount of the corresponding premium at age

VI.—Commissions mentioned herein do not apply to Group Insurance, Employers', Wholesale, or Association Insurance.

VII.—No commission shall be allowed on policies changed from Group Insurance plan mentioned in Section No. 6 to regular Life or Endowment plans.

VIII.—Where a policy is written for collateral in connection with a mortgage loan made by this Company, the commission shall be determined by the Company.

CONDITIONS OF CONTRACT.

Regulations. The Branch Manager subscribes to the following terms of his employment and agrees that a failure on his part to comply with these conditions shall, at the option of the Company, immediately terminate this agreement, but nothing herein shall be construed to affect any claims of the Company upon the Branch Manager.

Limitations. 1. The Branch Manager shall have no authority on behalf of the Company to incur any liability or debt against the Company, to accept risks of any kind, revive policies, grant permits, make, alter or discharge any contract or lease, to waive forfeitures, to extend the time of payment of any premium, or to waive payment in cash.

Service. 2. The Branch Manager shall *devote his entire time to the business of the Company* and in the conducting of the business of the Branch he shall be governed strictly by the rules and instructions which he may receive from time to time from the Company. It is further understood that during the continuance of this Agreement the Branch Manager may not become in any way connected with or secure business for any other insurance company, except in special cases where permission has been obtained from the Company. All applications and Medical Reports shall be delivered to the Company whether the same have been reported upon favourably or unfavourably by the medical examiner.

Indebtedness. 3. The Company may offset against any claim for compensation under this Agreement or any other Agreement between the Branch Manager and the Company, or any representative of the Company, any debt or debts due or to become due from the Branch Manager to the Company, whether arising hereunder or otherwise, which debt or debts shall be a first lien against such compensation, and the ledger account of the Company shall be competent and conclusive evidence of the state of the accounts between any of the parties referred to in this section.

Bond Licenses. 4. The said Branch Manager shall at once, and before transacting business for the Company, furnish a satisfactory bond (upon which he shall pay the premium) payable to the Company for the faithful performance of the terms and conditions of this Agreement and shall increase the same from time to time if required by the Company so to do. In the event of failure, for fifteen days, to comply with either of the above requirements, the Company shall at its option have the right to immediately terminate this Agreement. The Branch Manager shall also pay for such Agent's license as may be necessary.

Records. 5. The Branch Manager shall keep regular and accurate statements of all business transactions. Accounts are to be completed by the Branch Manager and returned to the Company with a full statement of all collections and monies received, as directed by the Company. All books of accounts, rate books, letters, documents, vouchers and other books and papers connected with the business of said Branch, are the property of the Company, whether paid for by the Company or not, and at any and all times shall be open to the Company or its representatives, for the purpose of examination, and shall be delivered to the Company or its representatives on demand, or on termination of this Agreement.

Circulars, Advertising. 6. No circular, advertisement or other matter shall be printed, published or used in any way by the Branch Manager unless the same shall first have been approved by the Company, nor shall any expenditure be made on behalf of the Company unless previously authorized by the Company.

Rebating. 7. The Branch Manager agrees not to pay or allow or offer to pay or allow any rebate of premium. Any violation of this condition shall render this Agreement liable to immediate termination, and all rights and claims which the Branch Manager might otherwise have hereunder shall thereupon be forfeited and shall cease.

Collections. 8. All money or securities received or collected by the Branch Manager for or on behalf of the Company, shall be securely held by him as a fiduciary trust and shall not be used by him for any purpose whatsoever, but shall be by him promptly paid or remitted to the Company, or deposited in an account in the name of

Service. 2. The Branch Manager shall *devote his entire time to the business of the Company* and in the conducting of the business of the Branch he shall be governed strictly by the rules and instructions which he may receive from time to time from the Company. It is further understood that during the continuance of this Agreement the Branch Manager may not become in any way connected with or secure business for any other insurance company, except in special cases where permission has been obtained from the Company. All applications and Medical Reports shall be delivered to the Company whether the same have been reported upon favourably or unfavourably by the medical examiner.

Indebtedness. 3. The Company may offset against any claim for compensation under this Agreement or any other Agreement between the Branch Manager and the Company, or any representative of the Company, any debt or debts due or to become due from the Branch Manager to the Company, whether arising hereunder or otherwise, which debt or debts shall be a first lien against such compensation, and the ledger account of the Company shall be competent and conclusive evidence of the state of the accounts between any of the parties referred to in this section.

Bond Licenses. 4. The said Branch Manager shall at once, and before transacting business for the Company, furnish a satisfactory bond (upon which he shall pay the premiums) payable to the Company for the faithful performance of the terms and conditions of this Agreement and shall increase the same from time to time if required by the Company so to do. In the event of failure, for fifteen days, to comply with either of the above requirements, the Company shall at its option have the right to immediately terminate this Agreement. The Branch Manager shall also pay for such Agent's license as may be necessary.

Records. 5. The Branch Manager shall keep regular and accurate statements of all business transactions. Accounts are to be completed by the Branch Manager and returned to the Company with a full statement of all collections and monies received, as directed by the Company. All books of accounts, rate books, letters, documents, vouchers and other books and papers connected with the business of said Branch, are the property of the Company, whether paid for by the Company or not, and at any and all times shall be open to the Company or its representatives, for the purpose of examination, and shall be delivered to the Company or its representatives on demand, or on termination of this Agreement.

Circulars, Advertising. 6. No circular, advertisement or other matter shall be printed, published or used in any way by the Branch Manager unless the same shall first have been approved by the Company, nor shall any expenditure be made on behalf of the Company unless previously authorized by the Company.

Rebating. 7. The Branch Manager agrees not to pay or allow or offer to pay or allow any rebate of premium. Any violation of this condition shall render this Agreement liable to immediate termination, and all rights and claims which the Branch Manager might otherwise have hereunder shall thereupon be forfeited and shall cease.

Collections. 8. All money or securities received or collected by the Branch Manager for or on behalf of the Company, shall be securely held by him as a fiduciary trust and shall not be used by him for any purpose whatsoever, but shall be by him immediately paid or remitted to the Company, or deposited in an account in the name of the Canada Life Assurance Company in such bank as it may designate; and it is expressly stipulated and agreed between the parties hereto, that in case the Branch Manager shall withhold any funds, policies or receipts belonging to the Company, after such funds, policies or receipts should in accordance with the Company's rules have been reported upon and transmitted to the Company, or if he shall withhold any funds, policies or receipts, after they have been demanded from him in writing, such dereliction shall work a forfeiture, unconditionally, of this Agreement and of all claims whatsoever accrued or to accrue under this Agreement to the Branch Manager, but nothing herein shall be construed to affect any claims of the Company upon the Branch Manager.

Territory. Subordinate Agents. 9. The territory in which the Branch Manager shall operate is ~~the State of Michigan, the Counties of Muskegon, Allegan, Kent, Kalamazoo, Barry, Ionia, Gratiot, Ottawa and Clinton, known as the Grand Rapids Branch, to remain as at present until it is specifically requested by the Branch Manager that they be placed under his jurisdiction.~~

but the Company shall have the right to send travelling or other Agents or officers into such territory to solicit and

effect insurance therein and to transact such other business as the interests of the Company may require. The Branch Manager shall cause the said territory to be thoroughly and ably canvassed, and to this end shall have the right within the said territory to appoint subordinate Agents within the terms of this Agreement, for whose fidelity and honesty he shall be responsible to the Company. A copy of every agreement made with such subordinate Agents shall be furnished to the Company at the time such agreements are entered into. Such appointment, however, shall be subject to the approval of the Company, and to such rules and instructions as may, from time to time, be established, and the Branch Manager shall be responsible to the Company for all monies collected by, or passing through the hands of such subordinate Agents, and the Branch Manager agrees to procure from every subordinate Agent, and deposit with the Company, a bond, satisfactory to the Company, for the due performance of his office, and a Government license. In case of the termination of this Agreement, or in case any subordinate Agents operating under the Branch Manager, leave the jurisdiction of the Branch Manager to become connected with the Company in another territory or in another capacity, the Company may, and is hereby empowered to, pay said subordinate Agents any commission or other compensation which the Branch Manager shall have agreed to pay to the said subordinate Agents, or any renewal commissions or compensation which would have been due the said subordinate Agents had they remained under the jurisdiction of the Branch Manager, and offset against all claims made under this Agreement such commission or compensation so paid, but nothing herein mentioned shall be held or interpreted as binding the Company to do so. And it is agreed that the liability entered into and assumed by the Branch Manager for and on behalf of subordinate Agents shall continue notwithstanding that the appointments of such subordinate Agents shall have been approved of by the Company, and the agreements and bonds above referred to shall have been entered into with the Company direct instead of with the Branch Manager, and that no act of the Company in its dealings with such subordinate Agents shall in any way release the said Branch Manager from his liability to the Company hereunder, and further that any subordinate Agent shall be the employee of the Branch Manager only, and shall under no circumstances have any claim whatsoever against the Company. Should such subordinate Agent become in any way indebted to the Company, the Branch Manager shall have no interest in either first year or renewal commissions on business secured by such subordinate Agent until such time as such indebtedness has been liquidated to the Company.

Previous Agreements. 10. In consideration of this Agreement, all existing agreements between the parties hereto, from the taking effect hereof, shall cease and terminate. Either party hereto may terminate this Agreement by giving to the other 60 days' notice in writing to that effect.

Confidential. 11. The Branch Manager agrees to consider the terms of this Agreement as strictly confidential, and agrees that he shall not mention nor exhibit the terms hereof to any person or persons under penalty of forfeiture of his rights hereunder.

Assignment. 12. Any rights of the Branch Manager under this Agreement shall not be sold or assigned by him without the consent of the Company in writing.

In Witness Whereof, *the parties hereto have set their hands this* 23rd

day of January 19 24

J. W. Taylor
Witness.

J. H. Abbass
Witness.

CANADA LIFE ASSURANCE COMPANY.

J. W. McCutcheon
General Superintendent

Branch Manager

BLANK PAGE

65 Attached to and forming part of the Contract between the Canada Life Assurance Company, and Gerald A. Eubank, of Detroit, Michigan, dated the 22nd day of January 1924.

13. It is further understood and agreed that during the continuance of this agreement only the Branch Manager will be allowed a collection charge of two percent (2%) on With Profit premiums and one percent (1%) on Without Profit premiums, after the nine-year period mentioned under Clause headed "Renewal Commissions" has expired.

14. Until further notice by the Company, the Branch Manager will be paid a salary in monthly instalments at the rate of $10,000 a year. The said salary is not in any event to extend beyond the continuance of this agreement.

15. It is hereby understood that in such cases in which the Company approves agreements and authorizes advances to subordinate agents appointed under the terms of this agreement and working in the Branch Manager's territory, one half the losses, if any, of such subordinate agent's advances are to be borne by the Company, the balance to be borne by the Branch Manager.

16. The Branch Manager shall be allowed his actual travelling expenses while away from Detroit, in the Branch Manager's territory on the Company's business.

17. Clauses Nos. 13 and 14 are to be considered as part of the "Compensation" under this agreement and shall be subject to the "General Conditions Regarding Compensation" and to "Conditions of Contracts" herein.

66 18. The Company agrees to furnish a suitable office and pay the necessary clerk hire, telephone, telegraph, and postage charges.

19. The Branch Manager shall be advanced the sum of $[illegible]083.33 per month until further notice. These advances are to be considered as a first lien and charge against all commissions, salary, or other compensation earned by the Branch Manager under the terms of this agreement, or any other agreements between the parties hereto. It is further agreed that these advances are not in any event to extend beyond the continuance of this agreement. It is further agreed and understood that any commissions, salary, or other compensations earned by the Branch Manager under this agreement or any other agreement between the parties hereto, over and above the advances paid him under this clause, shall be retained by the Company to liquidate any indebtedness on the part of the Branch Manager to the Company.

20. It is hereby agreed and understood between the parties hereto that the Company will undertake all responsibility in connection with the payment of the extra commission of five percent

(5%) on second year with profit premiums and one and one-half percent (1½%) on without profit premiums and any pension payable to an agent of the Company under the terms of any Whole Time agreement entered into by the Branch Manager and approved by the Company in writing.

21. It is further agreed and understood that in the event of the Company paying a pension to any agent so appointed by the Branch Manager all renewal commissions waived or relinquished by the Agent in accordance with the terms of the Pension Clause in his agreement with the Branch Manager shall be paid over to the Company and the Branch Manager shall have no right, title, or interest in the said commissions.

67 22. It is further agreed and understood, however, that this does not in any way affect the overriding commissions or any unearned commissions payable to the Branch Manager under the terms of his agreement with the Company on policies effected by or through the Agent. The terms "overriding Commissions" and "Unearned commissions" used in this clause are intended to refer to the difference between the commissions actually earned by the Agent and the commissions payable to the Branch Manager under his agreement with the Company on policies effected by or through the Agent.

Exhibit E

For a valuable consideration, the undersigned, Gerald A. Eubank hereby sells, assigns, and transfers to the Union Trust Company, of Detroit, Michigan, all his right, title, and interest in and to a certain agreement bearing date the 22nd day of January 1924, between Canada Life Assurance Company, of the first part, and said Gerald A. Eubank, party of the second part, made in connection with the employment by the said Assurance Company of the said Eubank as a branch manager for said Company, together with all moneys payable or to become payable to the said Eubank under and by virtue of the terms of the said contract.

In witness whereof, said Gerald A. Eubank has hereunto set his hand and seal this 24th day of November 1924.

Signed, sealed, and delivered in presence of:

(Signed) GERALD A. EUBANK. [L. S.]
(Signed) H. G. WOODRUFF.
(Signed) NED W. ANDRUS.

68 STATE OF MICHIGAN,
County of Wayne, ss:

On this 24th day of November 1924, before me, a notary public in and for said County, personally appeared Gerald A. Eubank,

to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

H. G. WOODRUFF,
Notary Public,
Wayne County, Michigan.

My Commission expires Jan. 20, 1928.

TORONTO, CANADA, *December 3, 1924.*

Receipt is hereby acknowledged of instrument of assignment dated November 24th, 1924, from Gerald A. Eubank to the Union Trust Company, of Detroit, Michigan, covering all his right, title, and interest in and to agreement of January 22nd, 1924, between the undersigned and said Gerald A. Eubank, a copy of which assignment is hereto attached.

CANADA LIFE INSURANCE COMPANY,
By H. G. WOODRUFF, *General Manager.*

69 In United States Circuit Court of Appeals for the Second Circuit

B. T. A. Docket No. 86200

Praecipe for transcript of record

Filed August 2, 1939

To the Clerk of the UNITED STATES BOARD OF TAX APPEALS:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Second Circuit copies duly certified as correct of the following documents in the above-entitled case:

1. The docket entries of proceedings before the Board;
2. Pleadings before the Board;
3. Findings of fact, opinion, and decision of the Board;
4. Petition for review, together with notice of filing and proof of service;
5. Agreement substituting stipulation of facts for statement of evidence;
6. Stipulation of facts; and
7. This praecipe.

(S) HARRY J. RUDICK,
(S) JOHN D. GARRISON,
Attorneys for Petitioner,
25 Broadway, New York, N. Y.

Service of a copy of the foregoing praecipe is acknowledged this 29th day of July 1939. No counterpraecipe will be filed.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue,
Counsel for Respondent.

70 [Clerk's certificate to foregoing transcript omitted in printing.]

71 In United States Circuit Court of Appeals for the Second Circuit

No. 138—October Term, 1939

(Argued February 16, 1940—Decided March 25, 1940)

GERALD A. EUBANK, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Petition to review a decision of the United States Board of Tax Appeals

The taxpayer seeks reversal of the Board's redetermination of a deficiency in his income tax for the year 1933. Reversed.

For the opinion of the Board see 39 B. T. A. 583.

Before SWAN, AUGUSTUS N. HAND, and PATTERSON, Circuit Judges.

Harry J. Rudick, Attorney for petitioner; Lord, Day & Lord and John W. Drye, Jr., of Counsel. Samuel O. Clark, Jr., Assistant Attorney General; Sewall Key and Morton K. Rothschild, Special Assistants to the Attorney General, for respondent.

Opinion

72 SWAN, Circuit Judge:

The question presented is whether renewal commissions payable to a general agent of a life insurance company after the termination of his agency and by him assigned prior to the taxable year, must be included in his income despite the assignment.

During part of the year 1924 the petitioner was employed by The Canada Life Assurance Company as its branch manager for the state of Michigan. His compensation consisted of a salary plus certain commissions. His employment terminated on September 1, 1924. Under the terms of his contract he was entitled to renewal commissions on premiums thereafter collected by the

company on policies written prior to the termination of his agency, without the obligation to perform any further services. In November 1924 he assigned his right, title, and interest in the contract as well as the renewal commissions to a corporate trustee. From September 1, 1924 to June 30, 1927, the petitioner and another, constituting the firm of Hart & Eubank, were general agents in New York City for the Aetna Life Assurance Company, and from July 1, 1927 to August 31, 1927, the petitioner individually was general agent for said Aetna Company. The Aetna contracts likewise contained terms entitling the agent to commissions on renewal premiums paid after termination of the agency, without the performance of any further services. On March 28, 1928, the petitioner assigned to the corporate trustee all commissions to become due him under the Aetna contracts. During the year 1933 the trustee collected by virtue of the assignments renewal commissions payable under the three agency contracts above mentioned, amounting to some $15,600. These commissions were taxed to the petitioner by the commissioner and the Board has sustained the deficiency resulting therefrom.

It is the view of the Board that Congress intended to tax salaries and commissions to those who earn them regardless
73 of priar assignments. Lucas v. Earl, 281 U. S. 111, and Burnet v. Leininger, 285 U. S. 136, are strongly relied upon. But in those cases, as this court has frequently pointed out, the assignor remained in control of the income, since it was only through his continued efforts that it could be earned. See Commissioner v. Field, 42 F. (2d) 820, 822; Lowery v. Helvering, 70 F. (2d) 713, 714; Rossmore v. Commissioner, 76 F. (2d) 520, 521; Shanley v. Bowers, 81 F. (2d) 13, 15; Machette v. Helvering, 81 F. (2d) 73, 74, cert. denied, 298 U. S. 677. In the case at bar the petitioner owned a right to receive money for past services; no further services were required. Such a right is assignable. At the time of assignment there was nothing contingent in the petitioner's right, although the amount collectible in future years was still uncertain and contingent. But this may be equally true where the assignment transfers a right to income from investments, as in Blair v. Commissioner, 300 U. S. 5, and Horst v. Commissioner, 107 F. (2d) 906 (C. C. A. 2), or a right to patent royalties, as in Nelson v. Ferguson, 56 F. (2d) 121 (C. C. A. 3). cert. denied, 286 U. S. 565. By an assignment of future earnings a taxpayer may not escape taxation upon his compensation in the year when he earns it. But when a taxpayer who makes his income tax return on a cash basis assigns a right to money payable in the future for work already performed, we believe that he transfers a property right, and the money, when received by the

assignee, is not income taxable to the assignor. The authorities are divergent. Hall v. Burnet, 54 F. (2d) 443 (C. A. D. C.), cert. denied, 285 U. S. 552, accords with our decision in the present case. Bishop v. Commissioner, 54 F. (2d) 298 (C. C. A. 7); Parker v. Routzahn, 56 F. (2d) 730 (C. C. A. 6), cert. denied, 287 U. S. 606; and Van Meter v. Commissioner, 61 F. (2d) 817 (C. C. A. 8) appear to be opposed to it. We believe that the limitation which this court set upon the doctrine of Lucas v. Earl is reasonable and should be followed by us unless higher authority determines it to be wrong.

Order reversed.

Dissenting opinion

74 PATTERSON, Circuit Judge, dissenting.

The renewal commissions were compensation for personal services rendered by the petitioner. In Lucas v. Earl, 281 U. S. 111, it was held that the Revenue Act of 1918, in providing for tax on "income derived from salaries, wages, or compensation for personal services," imposed the tax on him who earned the compensation, regardless of an assignment in favor of another. There the assignment was made in advance of earning the compensation, but the court put no stress on that feature. It was laid down broadly that the person taxed on account of personal compensation was the earner, and that the tax could not be deflected from him to another by means of an assignment. That this is the effect of the Earl case is indicated not only from the opinion in that case, but also from the later discussion of the case in Burnet v. Leininger, 285 U. S. 136, 141–142, and in Blair v. Commissioner, 300 U. S. 5, 11. I do not find any reason to confine the rule to instances where earnings have been assigned prior to the time when they were earned. On the contrary, I am of opinion that Lucas v. Earl governs a case like the present one, an assignment made after earning compensation. The 1932 Act is the same as the 1918 Act as to income from wages, salary, and compensation. I agree with the Board's decision and vote to affirm it.

75 In United States Circuit Court of Appeals, Second Circuit

GERALD A. EUBANK, PETITIONER
v.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Judgment

Filed April 12, 1940

Appeal From the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be, and it hereby is, reversed.

It is further ordered that a Mandate issue to the said Board in accordance with this decree.

D. E. ROBERTS, *Clerk.*

76 [File endorsement omitted.]

77 [Clerk's certificate to foregoing transcript omitted in printing.]

78 Supreme Court of the United States

Order allowing certiorari

Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following No. 27.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 44554. U. S. Circuit Court of Appeals, Second Circuit. Term No. 205. Guy T. Helvering, Commissioner of Internal Revenue, Petitioner, vs. Gerald A. Eubank. Petition for a writ of certiorari and exhibit thereto. Filed July 5, 1940. Term No. 205, O. T. 1940.

U. S. GOVERNMENT PRINTING OFFICE: 1940